

Todd M. Friedman (216752)
Law Offices of Todd M. Friedman, P.C.
369 S. Doheny Dr. #415
Beverly Hills, CA 90211
Phone: 877 206-4741
Fax: 866 633-0228
tfriedman@attorneysforconsumers.com
Attorney for Plaintiff

FILED

2009 NOV 30 P 3:01

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA. SAN JOSE

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CHARLES MCKAIN,

Plaintiff,

vs.

H&P CAPITAL, INC.,

Defendant.

) Case No.

) **C09 05621 PVT**

) **COMPLAINT FOR VIOLATION**

) **OF FEDERAL FAIR DEBT**

) **COLLECTION PRACTICES ACT,**

) **ROSENTHAL FAIR DEBT**

) **COLLECTION PRACTICES ACT,**

) **AND INVASION OF PRIVACY**

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices. Ancillary to the claims above, Plaintiff further alleges claims for

1 invasion of privacy arising from intrusion upon seclusion and public disclosure of
2 private facts.
3

4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).
6

7 **III. PARTIES**

8 3. Plaintiff, Charles McKain ("Plaintiff"), is a natural person residing in
9 Santa Clara county in the state of California, and is a "consumer" as defined by
10 the FDCPA, 15 U.S.C. § 1692a(3) and is a "debtor" as defined by Cal Civ Code
11 1788.2(h).
12

13 4. At all relevant times herein, Defendant, H&P CAPITAL, INC.
14 ("Defendant") was a company engaged, by use of the mails and telephone, in the
15 business of collecting a debt from Plaintiff which qualifies as a "debt," as defined
16 by 15 U.S.C. §1692a(5), and a "consumer debt," as defined by Cal Civ Code §
17 1788.2(f). Defendant regularly attempts to collect debts alleged to be due
18 another, and therefore is a "debt collector" as defined by the FDCPA, 15 U.S.C. §
19 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).
20
21
22

23 **IV. FACTUAL ALLEGATIONS**

24 5. At various and multiple times prior to the filing of the instant
25 complaint, including within the one year preceding the filing of this complaint,
26 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.
27
28

1 Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways,
2 including but not limited to:

- 3
4 a) Failing to provide Plaintiff with the notices required by 15 USC §
5 1692g, either in the initial communication with Plaintiff, or in writing
6 within 5 days thereof (§ 1692g(a)), including, but not limited to, leaving
7 a voicemail on October 19, 2009 advising Plaintiff it was urgent he call
8 back. When he called back, he was advised by a female employee of
9 Defendant that they just wanted to give Plaintiff a "heads up" that
10 HSBC was going to file suit against him. Plaintiff was not given any
11 other information and only learned who Defendant was by looking up
12 the information online;
- 13 b) Causing Plaintiffs telephone to ring repeatedly or continuously with
14 intent to harass, annoy or abuse Plaintiff (§ 1692d(5)), including, but not
15 limited to, calling Plaintiff more than twice in a day;
- 16 c) Communicating with Plaintiff at times or places which were known or
17 should have been known to be inconvenient for Plaintiff
18 (§ 1692c(a)(1)), including, but not limited to, calling Plaintiff more than
19 twice in a day;
- 20 d) Falsely representing that a legal proceeding has been, is about to be, or
21 will be instituted unless payment of a consumer debt is made (Cal Civ
22 Code § 1788.13(j)), including, but not limited to, leaving a voicemail on
23 October 19, 2009 advising Plaintiff it was urgent he call back. When he
24 called back, he was advised by a female employee of Defendant that
25 they just wanted to give Plaintiff a "heads up" that HSBC was going to
26 file suit against him. Plaintiff was not given any other information and
27 only learned who Defendant was by looking up the information online;
28 and
- e) Threatening to take an action against Plaintiff that cannot be legally
taken or that was not actually intended to be taken, including
threatening a lawsuit 1692e(5)), including, but not limited to, leaving a
voicemail on October 19, 2009 advising Plaintiff it was urgent he call
back. When he called back, he was advised by a female employee of
Defendant that they just wanted to give Plaintiff a "heads up" that
HSBC was going to file suit against him. Plaintiff was not given any
other information and only learned who Defendant was by looking up
the information online.

1
2 6. Defendant's aforementioned violations of the FDCPA and RFDCPA
3 also constitute an intentional intrusion into Plaintiff's private places and into
4 private matters of Plaintiff's life, conducted in a manner highly offensive to a
5 reasonable person. Plaintiff had a subjective expectation of privacy that was
6 objectively reasonable under the circumstances.
7

8
9 7. Defendant's aforementioned disclosure of facts regarding Plaintiff's
10 debt to third parties constitutes a public disclosure of a private fact not of
11 legitimate public concern. Defendant's disclosures were highly offensive to a
12 reasonable person.
13

14 8. As a result of the above violations of the FDCPA, RFDCPA and
15 invasion of privacy, Plaintiff suffered and continues to suffer injury to Plaintiff's
16 feelings, personal humiliation, embarrassment, mental anguish and emotional
17 distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages,
18 statutory damages, and costs and attorney's fees.
19
20

21
22 **COUNT I: VIOLATION OF FAIR DEBT**
23 **COLLECTION PRACTICES ACT**

24 9. Plaintiff reincorporates by reference all of the preceding paragraphs.
25

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff respectfully prays that judgment be entered
28 against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA;
- B. Actual damages;
- C. Statutory damages;
- D. Costs and reasonable attorney's fees; and,
- E. For such other and further relief as may be just and proper.

**COUNT II: VIOLATION OF ROSENTHAL
FAIR DEBT COLLECTION PRACTICES ACT**

10. Plaintiff reincorporates by reference all of the preceding paragraphs.

11. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the RFDCPA;
- B. Actual damages;
- C. Statutory damages for willful and negligent violations;
- D. Costs and reasonable attorney's fees,
- E. For such other and further relief as may be just and proper.

**COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION
AND INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS**

12. Plaintiff reincorporates by reference all of the preceding paragraphs.

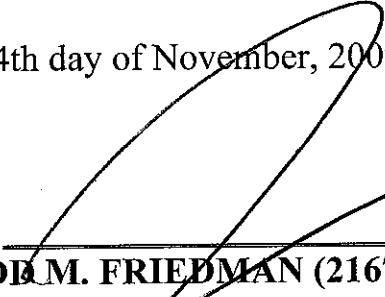
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Actual damages
- B. Punitive Damages; and,
- C. For such other and further relief as may be just and proper.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

Respectfully submitted this 24th day of November, 2009.

By: 
TODD M. FRIEDMAN (216752)
LAW OFFICES OF TODD M.
FRIEDMAN, P.C.
369 S. Doheny Dr. #415
Beverly Hills, CA 90211
Phone: 877 206-4741
Fax: 866 633-0228
tfriedman@attorneysforconsumers.com
Attorney for Plaintiff